

REMARKS

Claims 1-7 are pending in the captioned application.

In the outstanding Official Action, claims 1-7 are subjected to a specie election.

I. Election of Species

The Examiner has required that Applicants elect a single species of "warming material" under 35 U.S.C. §§ 121 and 372.

Applicants hereby elect ***capsicum extract*** as the single disclosed species of "warming material," without traverse.

Further, as required by the Examiner, Applicants submit that claims 1-7 read upon the elected species.

Applicants note that upon allowance of a generic claim, applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

CONCLUSION

Having made the required election, examination on the merits is earnestly solicited. Should the Examiner deem that any further action by Applicants' undersigned representative is desirable and/or necessary, the Examiner is invited to telephone the undersigned at the number set forth below.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP



Gary M. Nath
Reg. No. 26,965
Susanne M. Hopkins
Reg. No. 33,247
Customer No. 20529

Date: February 26, 2009
THE NATH LAW GROUP
112 S. West Street
Alexandria, VA 22314

Tel: (703) 548-6284
Fax: (703) 683-8396